

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5180 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDUBHAI @ CHANDU LANGDO MULJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5180 of 2002
MR HR PRAJAPATI for Petitioner No. 1
MR AY KOGJE Ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the District Magistrate, Bhavnagar dated 22.4.2002 in exercise of powers vested under him by

sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as bootlegger within the meaning of section 2(b) of the PASA Act. The sponsoring authority had submitted the bunch of the papers to the detaining authority and according to the detaining authority, the petitioner was found involved in 4 criminal cases punishable under the Bombay Prohibition Act. Four different unnamed witnesses have also stated about the bootlegging activities of the petitioner in their statements recorded on 9.4.2002 by the Sponsoring Authority. It is also on record that the Sub-Divisional Magistrate had initiated proceedings under sec. 93 of the Bombay Prohibition Act against the present petitioner and he was asked to execute the bond of Rs. 2000/ at the conclusion of the proceedings and on 11.3.2002 the bonds in compliance of the order passed by the Sub Divisional Magistrate was executed by this petitioner. From the table of the cases mentioned in the grounds of detention indicates that on 12.3.2002 the petitioner was found involved in a prohibition case and 224 bottles of liquor worth Rs. 67,200/ was recovered. It can be therefore, reasonably inferred that registration of this case has given rise to some proceedings. Sub Divisional Magistrate can legitimately proceed against the petitioner for violating the bonds executed by the petitioner and the sureties but the detaining authority on the strength of the totality and the activities of the petitioner, recorded its subjective satisfaction and detained the petitioner.

The petitioner has assailed the validity of the order of detention and especially continued detention on number of grounds, however, ld. counsel Mr. Prajapati has concentrated only one technical point and has submitted that the right or say protection enshrined under Article 22(5) of the Constitution of India has not been taken care off by the detaining authority. The obligatory duty on the part of the detaining authority to supply all relevant documents and that too legible documents has not been complied with and, therefore, the continued detention should be quashed. It is submitted that the court can even quash the detention order on this point also.

In the petition, the petitioner has specifically averred in para-4(l) that the document at sr. no. 17 & 149 are not legible and in the written representation, legible copies of these two documents are specifically

demanded and this demand was not complied by the detaining authority. The affidavit-in-reply is on record and it is not the say of the respondents that this demand was complied with. Mr. AY Kogje learned AGP has tried to argue that the limited portion of these two documents can be said to be illegible but reading the entire document it was possible to make an effective representation. So, only on this count, the order of detention cannot be should not be quashed. Mr. Prajapati has taken this court through these two documents and the Court is satisfied that some two to three words of the first line of the document at page 149 are not legible. It seems that while taking out the zerox copy from the original papers, this portion must have been gone under the slip affixed on the statement with a view to see that the names of the witnesses remains under the cover. Page no. 17 is the statement of one witness Jagdish Girdhar Dhandhaliya, Unarmed Head Constable of Palitana Town Police Station. He was a member of raiding party. On 11.7.2001 his statement was recorded and the same is considered by the detaining authority while recording the subjective satisfaction. This statement being important and vital has been supplied to the detenu. However, the 13th line of this document is not legible at all. In this very statement, line no. 18 is partly legible with some difficulty. I have bracketed i.e. notionally divided the said line in three different portions. The part-A & C can be said to be partly legible with difficulty. The part-B of the line is not legible at all. Considering the contents of the entire statement, these two lines have to be read in reference to the context of the previous and subsequent writing. Therefore, in view of the ratio of the decision of this Court in the case of Urmila Naresh Mittal vs. Union of India, reported in 1998(3) GLR p. 2438. Relevant paras-54, 56, 57 and 66 it can be legitimately argued that some important parts of the documents if not legible, the document can be said to be illegible. On fact, the Court has held that the document is illegible and the order under challenge was quashed.

Mr. Prajapati has drawn the attention of the Court to a decision in the case of Bhaveshkumar Ravjibhai Patel vs. State of Gujarat in SCA No. 9964 of 2000 decided on 20.10.2000 (Coram: D.P. Buch, J.), where this Court, referring the decision in SCA No. 618 of 1999 dated 3.3.2000, has held that non-supply of legible document would be violative of principle of natural justice and it would also hurt the statutory obligation for the petitioner to make effective representation and ultimately it would also hurt the Constitutional rights

guaranteed under Article 22(5) of the Constitution of India. In the cited decision, some portion of the documents were found not legible. The other decision cited by Mr. Prajapati is in the case of Pokhrajbhai Sohanbhai Chandel vs. District Magistrate, Surat & Ors., reported in reported in 1991(1) GLR p. 753. The Division Bench of this Court, in para - 3 & 4 of the decision has observed that the documents supplied to the detenu were not legible. In this cited decision, the Court found that in one of the document i.e. receipt referred to and relied upon by the detaining authority was not totally legible because the name of the payer of the amount was not traceable and the rubber stamp applied on it, was also not found legible. Ld. APP appearing in the matter i.e. Special Criminal Application had fairly submitted that this document (receipt) cannot be said to be a legible document⁶. So, on the strength of the facts before the Court, The Division Bench of this Court held that it is an infringement of the rights enshrined under Article 22(5) of the Constitution of India because the relevant document was not with the detenu for making effective representation. Ratio of this decision would help the petitioner.

The gravity of the activity of the detenu becomes irrelevant when the Court finds that the rights enshrined under Article 22(5) of the Constitution of India has been violated and therefore, the detention order shall have to be quashed and the continued detention shall have to be turned down and the petition requires to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 22.4.2002 passed by District Magistrate, Bhavnagar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
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